STATE OF NEW YORK

5836

2017-2018 Regular Sessions

IN SENATE

May 2, 2017

Introduced by Sens. KRUEGER, BAILEY, HAMILTON, HOYLMAN, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law, in relation to right of first refusal

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The private housing finance law is amended by adding a new article 2-A to read as follows:

ARTICLE II-A

RIGHT OF FIRST REFUSAL

Section 38. Definitions.

38-a. Notification of impending conversion.

38-b. Notification of bona fide offer to purchase.

38-c. Appraisal determination.

38-d. Right of first refusal.

38-e. First opportunity to purchase.

38-f. Prior notification.

38-g. Long term affordability.

38-h. Right of transfer.

38-i. Conversion of property.

38-j. Penalty.

38-k. Exclusions.

38-l. Judicial review.

§ 38. Definitions. For the purposes of this article, the following definitions shall apply:

1. "Affordable" shall mean that rental expenses for dwelling units do not exceed thirty percent of the annual gross household income of the existing tenants, and/or where rental expenses do not exceed the rent levels allowable pursuant to the rent restrictions applicable to such

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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dwelling units prior to conversion, provided however that dwelling units which become vacant in assisted rental housing should not be rented to households whose income exceeds eighty percent of the New York metropolitan area median income as determined by the United States department of housing and urban development.

2. "Appraised value" shall mean the value as determined by a majority vote of an advisory panel of three appraisers who shall perform such appraisal in accordance with the American Arbitration Association's rules for the real estate industry.

3. "Assisted rental housing" shall mean a privately-owned multiple dwelling or group of multiple dwelling units managed together under the same ownership in which the majority of dwelling units therein are subject to federal, state or city income eligibility restrictions and in which rents for such dwelling units are controlled, regulated or assisted by a federal, state or city agency pursuant to a regulatory agreement or rental assistance agreement designed to make such dwelling units affordable on a project-based basis. Assisted rental housing programs shall include:

(a) any program created, administered, or supervised by a municipality or state under article two or article four of this chapter.

(b) any program providing project-based assistance under section eight of the United States housing act of 1937, as it may be amended from time to time; and

(c) housing programs governed by section 202, 207, 221, 232, 236, or 811 of the national housing act, (12 U.S.C. 1701 et seq.), as they may be amended from time to time.

4. "Bona fide purchaser" shall mean a person or entity that has tendered a bona fide offer to purchase the assisted rental housing.

5. "Bona fide offer to purchase" shall mean a good faith and without fraud offer, made in writing and approved by the division that is tendered by a bona fide purchaser no later than one hundred twenty days after an appraisal performed pursuant to section thirty-eight-c of this article, and that is non-binding on the owner with intent to convert.

6. "Conversion" or "convert" shall mean the transfer of title, leasing, intention to sell or lease, mortgage pre-payment, withdrawal from an assisted housing program, decision not to extend or renew participation in the program or any other action taken by the owner that would result in the termination of participation by the owner in the assisted rental housing program.

7. "Household" shall mean all lawful occupants of any dwelling unit.

8. "Household income" shall mean, for any household, the sum of the amount reported separately in the most recent individual or joint tax return for wage or salary income, net self-employed income, interest, dividends, rent received, royalties, social security or railroad retirement benefits or disability benefits and all other income for each member of the household reported on a tax return.

9. "Division" shall mean the division of housing and community renewal or successor agency.

10. "Financial assistance" shall mean any benefits received as a result of an assisted rental housing program that act to maintain affordable rents in the assisted rental housing.

11. "First opportunity to purchase" shall mean the opportunity by a tenant association, or if applicable, a qualified entity, to purchase in good faith and without fraud the assisted rental housing at or below its appraised value before such assisted rental housing becomes subject to conversion.

12. "Notice" shall mean a written communication addressed to a tenant association, or if no tenant association exists, to each tenant, or if applicable, to a qualified entity, by means of first class and registered mail, or personal delivery upon a tenant association, or if no tenant association exists, upon each tenant, or if applicable, a qualified entity. Each such notice shall be deemed to have been given upon the deposit of such first class and registered mail in the custody of the United States postal service or upon receipt of personal delivery, and by posting of such notice in the common areas of the assisted rental housing.

13. "Owner" shall mean any person or entity, or combination of such persons or entities, or any agent of such persons or entities, that has a controlling interest in assisted rental housing that is subject to conversion.

14. "Qualified entity" shall mean any individual, partnership, limited liability partnership, limited liability corporation, not-for-profit corporation or business corporation, or other entity authorized to do business in New York state and experienced in the management of affordable housing, designated by the tenants residing in at least sixty percent of the occupied dwelling units within the same assisted rental housing to act on its behalf pursuant to section thirty-eight-h of this article and approved in writing by the division and which obligates itself and any successors in interest to assume the ongoing responsibility of continuing maintenance and operation of the assisted rental housing as affordable for the duration of the housing's useful life and in accordance with the purposes of this article.

15. "Right of first refusal" shall mean the right of a tenant association, or if applicable, a qualified entity, to submit a good faith and without fraud offer, in writing to the owner to purchase the higher of the assisted rental housing's appraised value or the identical price, terms and conditions offered by a bona fide purchaser as approved by the division.

16. "Tenant" shall mean a lawful occupant who resides within a dwelling unit within such assisted rental housing pursuant to law or a lease recognized by either the owner of such assisted rental housing, the division or a court of competent jurisdiction.

17. "Tenant association" shall mean an association, whether incorporated or not, for which written consent to forming a tenant association has been given by tenants representing at least sixty percent of the occupied dwelling units within the same assisted rental housing, and which association notifies or has notified the owner of the assisted rental housing and the division of its existence or establishment and has provided to such owner and the division the names and addresses of at least two of the officers or representatives of such association. Where more than one group of tenants in the same assisted rental housing claims to be the tenant association for such assisted rental housing, the division shall determine which group, if any, is the tenant association for the purposes of this article in the same manner as the division certifies a tenant association for the purposes of article two of this chapter.

§ 38-a. Notification of impending conversion. 1. Notice shall be provided by the owner to the tenant association, or if no tenant association exists, to each tenant, and to the division of the intention of the owner to take any action that will result in the conversion of the assisted rental housing.

2. Such notice shall be provided no less than twelve months prior to the taking of such action by the owner. Such notice shall include the following information:

(a) the name and address of each owner of the assisted rental housing. For any owner that is a corporation, the notice shall contain the names and addresses of the officers and directors of the corporation and of any person directly or indirectly holding more than ten percent of any class of the outstanding stock of the corporation. For any owner that is a partnership or joint venture, the notice shall contain the name and address of each individual who is a principal or exercises control of such entities;

(b) the address and/or addresses and the name and/or names of the assisted rental housing and the type of program or programs to which the assisted rental housing is subject;

(c) the nature of the action that the owner intends to take that will result in a conversion;

(d) the date on which such action resulting in the conversion is anticipated to take place;

(e) the provision of law, rule or regulation pursuant to which such action is authorized;

(f) the total number and type of dwelling units subject to a conversion;

(g) the current rent schedule for the dwelling units along with an estimation of the rent increases anticipated upon conversion;

(h) the income and expense report for the twelve-month period prior to the notice including capital improvements, real property taxes and other municipal charges;

(i) the amount of the outstanding mortgage as of the date of the notice;

(j) the two most recent inspection reports from the real estate assessment center of the United States department of housing and urban development, for the assisted rental housing or group of multiple dwelling units operated together under the same ownership for which such inspection reports are required, or, the reports of the two most recent comprehensive building-wide inspection reports that may have been conducted by the division;

(k) a statement of notice in a manner approved by the division which advises a tenant association, or if no tenant association exists, advises each tenant, of the first opportunity to purchase as required by section thirty-eight-e of this article, or of the right of first refusal, as required by section thirty-eight-d of this article; and

(l) such other information the division may require.

3. During the twelve-month notification period provided for in subdivision two of this section the owner may not sell or contract to sell the assisted rental housing, but may engage in such discussions with other interested parties.

4. Notice shall not be required of an owner who intends to maintain the property as assisted rental housing or intends to transfer, lease or refinance a mortgage in order to maintain the property as assisted rental housing.

5. Where an owner decides not to convert the assisted rental housing program, such owner may withdraw the notice of intention to convert the assisted rental housing program, subject to the terms of any accepted offer to purchase or executed purchase and sale agreement, and to existing statutory and common law remedies. In such event, the owner shall give notice to the tenant association, or if no tenant association

exists, to each tenant, or if applicable, to a qualified entity, and to the division. However, should the owner at any time decide to take an action that will result in conversion, the twelve-month notice period of this section as well as all other applicable requirements of this article shall be complied with.

6. Notwithstanding any other provisions of this section, if any applicable supervening statute or program has a notice requirement substantially similar to any notice requirement of this section, then the notice requirement under this section shall be that of the supervening statute or program.

7. Notwithstanding any other provisions of this section, if the notices required by this section require more information than is required by any applicable supervening city, state or federal statute or program, then such additional information shall be provided within the time period established by the supervening statute or program.

§ 38-b. Notification of bona fide offer to purchase. 1. If the owner receives a bona fide offer to purchase and intends to consider, or respond to such bona fide offer to purchase, then notice shall be provided by the owner to a tenant association, or if no tenant association exists, to each tenant, or if applicable, a qualified entity, and the division, no more than fifteen days from the date that such bona fide offer to purchase is delivered to the owner. Such notice shall contain the following information:

(a) the name and address of the proposed bona fide purchaser; and

(b) the price and terms and conditions of the offer.

2. The owner shall not be required to provide notice in accordance with subdivision one of this section if the bona fide purchaser making the offer agrees to maintain the assisted rental housing as affordable. The bona fide purchaser shall be required to inform the division as to how such bona fide purchaser intends to keep the assisted rental housing as affordable.

§ 38-c. Appraisal determination. 1. The division shall convene an advisory panel, which advisory panel shall determine the appraised value of the assisted rental housing within thirty days of a tenant association's, or if applicable, a qualified entity's notice to the owner and the division pursuant to subdivision one of section thirty-eight-d or subdivision one of section thirty-eight-e of this article.

2. The advisory panel shall consist of one appraiser selected by the owner, one appraiser selected by the tenant association, or if applicable, a qualified entity, and one appraiser to be selected either by mutual agreement between the owner and the tenant association or if applicable, a qualified entity, or by mutual agreement between the appraiser that was selected by the owner and the appraiser selected by the tenant association, or if applicable, a qualified entity, if such condition is deemed acceptable to the owner and the tenants association, or if applicable, a qualified entity, and is agreed upon in writing, except that in the case of where there is no agreement between the owner and the tenant association, or if applicable, a qualified entity, or between the appraiser that was selected by the owner and the appraiser selected by the tenant association, or if applicable, a qualified entity, then the appraiser will be selected by the division. The cost for the appraiser shall be borne by the party responsible for providing such appraiser. However, where the division must select the third appraiser, the cost for such appraiser shall be equally borne by the owner and the tenant association, or if applicable, a qualified entity.

3. Notice shall be provided by the division to the owner and the tenant association, or if applicable, a qualified entity, fifteen days before the intended date that such advisory panel is to initiate the performance of the appraisal. In the instance when either the owner fails to provide an appraiser within fifteen days of such notice or when the tenant association, or if applicable, a qualified entity, fails to provide an appraiser within fifteen days of such notice then the division shall select the appraiser on behalf of the party or parties that failed to select an appraiser. In such circumstance, the cost for the appraiser selected by the division shall be borne by the party responsible for providing that appraiser.

4. The division shall promulgate rules for the timely determination of the appraised value and that such rules are to be consistent with the notice requirements mandated under this chapter. The division shall make such appraised value publicly available within fifteen days from the date of such advisory panel's determination.

5. In the instance where the owner and the tenant association, or if applicable, a qualified entity, have mutually agreed upon an appraised value for the assisted rental housing prior to the convening of the advisory panel, the owner and the tenant association, or if applicable, a qualified entity, may in writing apply to the division for a waiver from subdivisions one through four of this section. The division shall make a determination upon such application for a waiver within fifteen days from receipt of such application.

§ 38-d. Right of first refusal. 1. A tenant association, or if applicable, a qualified entity, shall notify the owner and the division in writing of its intent to exercise its right of first refusal within sixty days from receipt of notice from the owner pursuant to subdivision one of section thirty-eight-a of this article.

2. The tenant association, or if applicable, a qualified entity, following notice by the owner in compliance with subdivision one of section thirty-eight-a of this article, shall have one hundred twenty days from the date of the notice of the determination of the appraised value to submit its offer to purchase.

3. The tenant association, or if applicable a qualified entity, following notice by the owner in compliance with subdivision one of section thirty-eight-b of this article, shall have one hundred twenty days from the date of a bona fide offer to purchase to submit its offer to purchase.

4. If through no fault of a tenant association, or if applicable, a qualified entity, or the owner, the time periods provided for in subdivision two or three of this section need to be extended, then such time periods may be extended by the division. Should such time periods be extended past the notice period provided for in subdivision one of section thirty-eight-a of this article, then the provisions of the applicable assisted rental housing program shall remain in full force and effect to the extent permitted by law.

5. Unless the owner and a tenant association, or if applicable, a qualified entity, otherwise agree to purchase the assisted rental housing below its appraised value, the owner shall sell such assisted rental housing at the appraised value or at the price contained in a bona fide offer to purchase price as approved by the division.

6. The division shall promulgate rules for the timely completion of all lending program applications, credit reviews and loan closings.

7. If a tenant association, or if applicable, a qualified entity, does not submit its offer in writing to the owner and the division within the

time periods stated in subdivision two or three of this section following notice by the owner in compliance with subdivision one of section thirty-eight-a of this article, then such right will be deemed waived and the owner shall have no further obligations under this section. However, where a tenant association, or if applicable, a qualified entity, has previously submitted a notice in accordance with subdivision one of this section decides not to exercise such right, it may withdraw such notice by giving written notice to that effect to the owner and to the division.

§ 38-e. First opportunity to purchase. 1. A tenant association, or if applicable, a qualified entity, shall notify the owner and the division in writing of its intent to exercise its right of first opportunity to purchase within sixty days from receipt of notice from the owner pursuant to subdivision one of section thirty-eight-a of this article.

2. The tenant association, or if applicable, a qualified entity, following notice by the owner in compliance with subdivision one of section thirty-eight-a of this article, shall have one hundred twenty days from the date of the notice of the determination of the appraised value to submit its offer to purchase.

3. If through no fault of a tenant association, or if applicable, a qualified entity, or the owner, the time period provided for in subdivision two of this section needs to be extended, then such time period may be extended by the division. Should such time period be extended past the notice period provided for in subdivision one of section thirty-eight-a of this article, then the provisions of the applicable assisted rental housing program shall remain in full force and effect to the extent permitted by law.

4. Except where the owner and a tenant association, or if applicable, a qualified entity, agree to a purchase price of the assisted rental housing at an amount below the appraised value, any offer made pursuant to this section shall be accepted by the owner.

5. If a tenant association, or if applicable, a qualified entity, does not submit its offer in writing to the owner and the division within the time periods stated in subdivision two of this section following notice by the owner in compliance with subdivision one of section thirty-eight-a of this article, then such right will be deemed waived and the owner shall have no further obligations under this section. However, where a tenant association, or if applicable, a qualified entity, has previously submitted a notice in accordance with subdivision one of this section decides not to exercise such right, it may withdraw such notice by giving written notice to that effect to the owner and to the division.

§ 38-f. Prior notification. Notwithstanding any other provision of this article, where an owner has given notice prior to the effective date of this article and the intent of such notice is to initiate a procedure to withdraw the assisted rental housing from a program set forth in subdivision three of section thirty-eight of this article, and such notice was properly given in accordance with any other applicable provision of law and more than forty-five days remain prior to the expiration of the time period applicable to such notice, a tenant association, or if applicable, a qualified entity, may complete any action authorized by sections thirty-eight-c, thirty-eight-d and thirty-eight-e of this article at any time prior to the expiration of such time period.

§ 38-g. Long term affordability. A tenant association, or if applicable, a qualified entity, including all successors in interest, which chooses to exercise the rights provided for in section thirty-eight-d or

section thirty-eight-e of this article will be obligated to maintain the assisted rental housing as affordable.

§ 38-h. Right of transfer. 1. During the notice period provided for in section thirty-eight-a of this article, the tenants, by written consent of the tenants residing in at least sixty percent of the occupied dwelling units within the same assisted rental housing, may transfer the rights established by section thirty-eight-d and section thirty-eight-e of this article to a qualified entity.

2. Notice of such transfer shall be provided to the owner and the division in writing within sixty days from receipt of notice from the owner pursuant to section thirty-eight-a of this article.

§ 38-i. Conversion of property. Notwithstanding the provisions of section thirty-eight-d and section thirty-eight-e of this article, when a conversion occurs, an owner or bona fide purchaser shall allow the current tenant or tenants to remain in their respective dwelling units for the longer of six months from the effective date of the conversion or until the tenant's lease expires, and at the same terms and conditions as before such conversion. Such owner or purchaser may, with the agreement of the tenant or tenants, relocate such tenant or tenants to comparable units with comparable rents in accordance with procedures to be established by the rules of the division. Nothing in this section shall be deemed to limit, restrict or modify the rights of a current tenant or tenants pursuant to the emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law, the city rent and rehabilitation law or the rent stabilization law of nineteen hundred sixty-nine.

§ 38-j. Penalty. An owner found to have violated any provision of this article shall, in addition to any other monetary and/or equitable damages for which the owner may be liable, be liable for a civil penalty of five thousand dollars per month per dwelling unit in the assisted rental housing, and shall also pay to a tenant association, or if no tenant association exists, each tenant, or if applicable, a qualified entity, fees and costs incurred in bringing an enforcement proceeding. The total civil penalties may not exceed one hundred thousand dollars per dwelling unit. Nothing in this section shall be interpreted as prohibiting the tenant association, or if no tenant association exists, the tenants, or if applicable, a qualified entity, from seeking injunctive relief against a non-compliant owner. Such proceeding shall be brought in a court of competent jurisdiction.

§ 38-k. Exclusions. 1. Nothing in this article shall affect any existing agreement between a tenant association and an owner regarding the management and operation of the assisted rental housing or the transfer of the assisted rental housing to a tenant association or similar organization in effect on the effective date of this article, except that any renewal, modification or amendment of such agreement occurring on or after the effective date of this article shall be subject to the provisions of this article.

2. Nothing in this article shall affect any existing agreement between an owner and one or more governmental entities relating to the management and operation of a multiple dwelling that is not otherwise subject to this chapter or to federal law.

3. Nothing in this article shall affect an owner or purchaser who wants to refinance in order to maintain participation in an assisted rental housing program.

4. The provisions of this article shall not apply to a purchase by a governmental entity implementing its powers of eminent domain; a judi-

cially supervised sale or transfer of property; any bankruptcy proceedings; or operation of law.

5. The provisions of this article shall not apply where a notice as described in section thirty-eight-f of this article was properly given in accordance with any other applicable provision of law and forty-five or fewer days remain prior to the expiration of such applicable notice period.

6. The provisions of this article shall prevail, notwithstanding any contrary provisions of this chapter, the eminent domain procedure law, or any other law.

§ 38-l. Judicial review. Any person aggrieved by an appraisal determination made pursuant to section thirty-eight-c of this article, or by the failure of the division to approve a bona fide offer to purchase, may, within thirty days of the appraisal determination or action by the division, seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the assisted rental housing is located. In the event that a court may find that the appraisal or action by the division constitutes the equivalent of a taking without just compensation, the court shall require that a new appraisal or determination be made. The time periods set forth in this article shall be tolled during the pendency of such a proceeding and until a new appraisal or determination, if needed, is made.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.